



City of Seattle

Gregory J. Nickels, Mayor
Department of Planning and Development
D. M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application number: 3009412

Applicant name: Dennis Pflug for Wonderboyz, LLC dba Babalu's

Address of Proposal: 1723 N. 45th Street

SUMMARY OF PROPOSED ACTION

Land Use Application to change the use of a 1,340 sq. ft. tenant space from restaurant to drinking establishment ("Babalu's"), in an existing commercial building.

The following approval is required:

- **Administrative Conditional Use** - To allow a drinking establishment in a Neighborhood Commercial Two (NC2P-40) zone. (Chapter 23.47A.006, Seattle Municipal Code)

SEPA DETERMINATION: ☒ Exempt ☐ DNS ☐ MDNS ☐ EIS
☐ DNS with conditions
☐ DNS involving non-exempt grading, or demolition, or
involving another agency with jurisdiction

BACKGROUND DATA

Site and Vicinity Description

The subject property is located on the southwest corner of Wallingford Ave. N. and North. 45th Street in a Neighborhood Commercial 2 (NC2P-40) zone, with a Pedestrian and Urban Village Overlay. Wallingford Center (the former Interlake Elementary School, now shops and apartments) is located on the southeast corner and a "mixed use" building similar to the one on

the subject site occupies the northwest corner of this neighborhood commercial district. A grocery store (QFC) occupies the northeast corner of the same intersection. The commercial zoning continues along N. 45th Street from Woodlawn Pl. N. to the west to Latona Ave. NE to the east and features many small retail and service businesses (such as: hair salons, shoe and clothing shops, home furnishings, a hardware store, banks, a pharmacy), some offices as well as taverns and bars, cafes, the Guild 45th movie theater and numerous restaurants. The commercial zoning changes to multi-family zoning midblock north and south of N. 45th Street and then transitions to single family zoning to the north and south respectively, except along Wallingford Ave., where the transition is directly from commercial to single family (SF5000) zoning south of N. 44th Street.

A neighborhood Commercial zone is intended to allow for “household retail sales and services” that serve the immediate area and the Urban Village overlay is intended to provide residential density in the area. The retail and service businesses in this Neighborhood Commercial area historically draw clientele from the immediate area as well as surrounding neighborhoods and at times the greater Seattle area. The area is served by bus routes 16 and 26 with stops within steps (to the east) of the proposed drinking establishment.

The building on the subject site has approximately 95 ft. of street frontage on Wallingford Ave and approximately 60 ft. of frontage on N. 45th Street and there are seven residential units on the second floor of the “mixed use” building. The two story building is typical of others built between the 1920’s and the 1950’s, located in the immediate area. These buildings contain a mix of restaurants, office or retail use at street level and residential uses on the second level. Mixed use buildings located near the subject site include the Queen City Apartments on the corner west of the subject property (at 45th and Densmore Ave. N.) as well as a mixed commercial and residential building directly south of the subject property and another similar building on the north side of N. 45th Street. Typically these structures are built lot line to lot line and do not provide parking on site. Two neighboring buildings on the northeast and southeast corners of the abutting right-of-ways (N. 45th and Wallingford Ave.) were developed with on-site parking.

Proposal Description

The ground level tenant space for the proposed drinking establishment occupies approximately 1,340 sq. ft. and was remodeled in 2007 by the current (business and building) owner. The primary entrance is at the corner of Wallingford Ave. and N. 45th Street however an emergency egress is located on the east facing façade, near a separate entrance for the residential units located on the second floor of the building. There is additional seating outdoors in a previously permitted 240 sq. ft. sidewalk café along Wallingford Ave. No (inside or outside) expansion is proposed. Floor plans for the proposed use include two “bar” areas, a stage, fireplace and general seating. The menu provided offers appetizers and “TV Dinner” entrees. Proposed hours of operations are Tuesday - Saturday 6:00 p.m. – 2 a.m. “Occasional” live music is proposed. The applicant reports that the existing restaurant “cater(s) to adults in their forties, fifties and sixties” and the clientele is expected to remain the same.

Public Comment

A two week extension of the initial two week comment period was requested and granted. The comment period ended September 24, 2008 and four (4) comment letters were received. One letter favored the project, the others expressed concerns. Specific concerns cited include: lighting impacts (a flashing LED light in a front window), operations past 2 a.m., parking impacts, obstruction of the sidewalk (by signage and seating), noise from live music, patrons “partying” and littering on the sidewalk, intoxicated patrons yelling obscenities and fighting near parked cars in residentially zoned areas and in front of the building, especially at closing.

Subsequent to the comment period the flashing light was removed. The sidewalk café, along Wallingford Ave. was previously established by permit and will be subject to limited use as discussed below. Noise and parking impacts will be discussed (below) in this Decision.

ANALYSIS - ADMINISTRATIVE CONDITIONAL USE (SMC 23.47A.006)

SMC 23.47A.006 Conditional uses.

- A. *All conditional uses are subject to the procedures described in Chapter 23.76, Master Use Permits and Council Land Use Decisions, and must not be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located. In authorizing a conditional use, the Director or City Council may require that adverse impacts be mitigated by imposing any conditions to protect other properties in the zone or vicinity, to compensate for impacts, and to protect the public interest. The Director shall deny or recommend denial of a conditional use if the Director determines that adverse impacts cannot be mitigated satisfactorily.*

The commercial district zoning on this block (NC2P-40) abuts a single family zone (SF5000), which begins south of N. 44th Street. The southwest corner of the block also has multifamily zoning (L-2). Many of the buildings in the NC zone near the subject site have apartments above street level commercial spaces. Public comment about the business (as it has been functioning for several years) suggest that there are parking and noise impacts in the vicinity of the tenant space, associated with the use, along Densmore Ave N., N. 44th Street and Wallingford Ave.

With regard to ‘noise’ the applicant reports that as part of the remodeling done in 2007 “sound baffled windows and doors” were installed. With regard to patrons conduct and business practices, the project proponent reports: *"Guests and customers are targeted towards those of middle to older age ranges and more affluent in nature. They are expected to be generally neatly dressed, sober, and well behaved."*, however most of the complaints about noise involved patron conduct when returning to their vehicles, especially at closing. The applicant reports there will be occasional live music, that the events will be posted in advance in a location that is visible to the public and that security is hired for live music events.

The City’s noise control ordinance (SMC 25.08) is intended to provide for commerce the use and enjoyment of property; steep and repose, and environmental quality. Specifically, with regard to nightlife disturbance SMC 25.08.501 states “It is unlawful for any person in possession of real

property, other than residential property, to allow to originate from that property between the hours of ten (10:00) p.m. and seven (7:00) a.m. amplified noise that is plainly audible to a person of normal hearing when measured inside a receiving dwelling unit.”

SMC 25.08.410 defines the maximum permissible sound levels. For sound sources located within the City or King County, the maximum permissible sound levels are as follows:

District of Sound Source	District of Receiving Property Within The City of Seattle		
	Residential (dB(A))	Commercial (Db(A))	Industrial (dB(A))
Residential	55	57	60
Commercial	57	60	65
Industrial	60	65	70

SMC 25.08.890 provides the following enforcement provision for nightlife disturbance violations: “If after investigation the Administrator (i. e. the Department of Planning and Development) determines that the provisions of Section 25.08.501 have been violated, the Administrator may issue a citation, ...”. The noise ordinance is enforced by complaint to the Department of Planning and Development, Code Enforcement Division.

Given that there are residential units above commercial space on the subject site and to the west and south of the same block, and across the streets to the east and the north, as well as a residential zone on the southwest portion of the same block, and one block south and given that problems have been experienced from ongoing operations of the business establishment, conditions are warranted to mitigate the noise impacts of the proposed drinking establishment.

No live or amplified music will be permitted in the (legally established) “sidewalk café” area, along Wallingford Ave. and use of the sidewalk café will be restricted after 10 pm on weeknights (Sunday through Thursday) and after 11 pm on weekends. The applicant will be required to provide security sufficient to respond to any patrons creating a public nuisance, especially at closing, when live entertainment is offered. Signage that includes expectations for patrons and contact information for area residents if there is excessive noise should be posted in a permanent location that is visible to patrons and to area residents.

In addition to the City noise ordinance, conditions will be applied to the project for outdoor use of the sidewalk café, for staffing of live performances and for signage informing patrons about nearby residents. With these conditions and existing noise regulation as described above, the operation of the drinking establishment is not expected to be materially detrimental to the public welfare or property in the zone or vicinity.

B. The following uses, where identified as administrative conditional uses on Chart A of Section 23.47A.004, or other features of development identified in this Section, may be permitted by the Director when the provisions of subsection A are met, subject to the further provisions below in this subsection:

1. *Drinking Establishment. Drinking Establishments in an NC1 or NC2 zone may be permitted as a conditional use subject to the following conditions or criteria:*
 - a. *The size of the Drinking Establishment, design of the structure, signing and illumination shall be compatible with the character of the commercial area and other structures in the vicinity, particularly in areas where a distinct and definite pattern or style has been established.*

As previously described, the structure, built in 1926, with ground level commercial space and residential units above is typical in the area. No alteration of the existing building envelope for the tenant space is proposed. The existing exterior facades will remain the same, as will entry and exit points and window openings. The existing tenant space fits within the pattern of tenant spaces of one and two story commercial structures in the area.

The canopy over the public sidewalk, on the exterior façade, was upgraded in 1995 by a previous tenant to include lighting. The illuminated signage on the building will be updated to reflect the new business name. Interior signage was added in 2000. Changes are not proposed to the business signage. The signage and illumination (as allowed by code and established by permit) is compatible with the existing character of the neighborhood commercial development in the vicinity of the proposed drinking establishment.

- b. *The location, access and design of parking shall be compatible with adjacent residential zones.*

The existing building was constructed lot line to lot line with no onsite parking which is similar to other buildings in the immediate area. No on-site parking is proposed. Patrons driving to the site will utilize available street parking.

While Residential *uses* are permitted and exist in this neighborhood commercial (NC2) zone the nearest (multi-family) residential *zone* begins one half block to the north of N.45th Street and to a (single family) residential *zone* one block to the south. Public comment suggested that on street parking in or near the residential zones is utilized by patrons.

The applicant reports that their hours of operations (6 pm – 2 am) are off-set from many surrounding retail businesses with the implication that parking is more available during the evening and therefore not a problem. In addition, the trip generation for the new use (drinking establishment) is less than for the existing established use (restaurant). However with a number of residential units in the immediate vicinity (NC2 zone) and the proximity of the adjacent residential zones it is possible that the demand is just as high in the evening hours as in the daytime. The applicant was required to conduct a parking study as discussed later in this report (see SMC 23.47A.006.B.1.b, below, for a more detailed discussion of off-site street parking), in order to determine the existing parking demand and determine the need for any mitigation related to off-site parking impacts.

As previously noted, no onsite parking is provided as is the case with many other buildings in this neighborhood commercial district. In that respect the current use of street parking is

compatible with the adjacent residential zoned areas. Additional consideration of parking mitigation will be discussed under off-site parking.

- c. Special consideration shall be given to the location and design of the doors and windows of Drinking Establishments to ensure that noise standards will not be exceeded. The Director may require additional setbacks and/or restrict openings on lots which abut residential zones.*

Windows in the subject tenant space front primarily on the arterial (N. 45th Street) with approximately 10 ft. of windows in the façade along the arterial Wallingford Ave N. As mentioned in the site description (above), the primary entrance is at the corner of the site (N. 45th Street and Wallingford Ave. N.) and a second (emergency) egress is located on Wallingford, next to the entrance to the second floor apartments.

As described above, there are residential units in the same building, across the streets to the north and east, on the same block, all within the commercial zone. However, residential zoning does not abut the subject site. Further, the applicant reports that there were improvements made to the windows and wall and ceiling insulation (in 2007) to provide for sound attenuation. There are no additional changes proposed.

The subject site does not abut a residential zone, however, noise from live performances was noted in the public comment and a condition of approval will be added to this Decision that will restrict live or amplified music to the interior of the building (i.e., not in the sidewalk café). In addition, at least one week of advance notice will be provided for live performances. Both of the doors in the tenant space are required ingress and egress points. Signage at both points will be required to remind patrons of the expectation for courtesy to the nearby residents. Previous noise attenuation provided for the tenant space, the conditions noted above, and the application of the adopted noise ordinance are sufficient to control noise levels at the site.

- d. Drinking Establishments shall not generate traffic which creates traffic congestion or further aggravates spillover parking on residential streets.*

According to Trip Generation, “7th Edition,” ITE (Institute for Transportation Engineers), a peak hour trip generation for a “Drinking Place” is 15.49 trips generated per 1,000 square feet of gross floor area or 20.75 peak hour trips for this 1,340 sq. ft. tenant space. The trip generation for drinking establishments is less than for restaurants (the existing established use). For restaurants the peak trip generation rate is 19.4 trips. The Trip Generation Manual does not set the time of the peak hour for Drinking Establishments however it is widely agreed that the peak number of trips for restaurants and drinking establishments occur later than the PM Peak Hour Commute Trips. During commute PM peak times (4pm to 6pm) the Trip Generation Manual reports an average rate of 11.34 trips expected for the drinking establishment.

It should be noted that the ITE cited Trip Generation samples above were taken in more suburban settings where pedestrian access and community transit are minimal and vehicle travel is more prevalent. The subject proposal is located on an arterial served by two major bus lines with several other lines available within walking distance and is within walking distance for area

residents. As a result the traffic (and related parking) impacts will most likely be less than the averages given above.

A parking availability survey was conducted by the applicant which found that three of the six streets within 400 ft. of the site (Densmore Ave N., N. 45th Street and N. 46th Street) are operating at capacity in the evening. However, 33 spaces were available (within 400 ft., south of N. 45th Street on N. 44th Street, Burke and Wallingford), enough to provide for the full number of peak hour trips. It should also be noted that the last permitted use (restaurant) was not required to provide any on-site parking because the land use code (SMC 23.54.030) does not require parking when a use is established in an existing building without parking.

Based on the proposed size of the drinking establishment, the submitted parking utilization study, the off-set of commute traffic times and peak trip times for the proposed use, location near a major arterial (N. 45th Street) with bus service, proximity to potential patrons and the development pattern established in the immediate area, the proposed change of use to drinking establishment is not expected to “further aggravate spillover parking”.

DECISION-CONDITIONAL USE

The conditional use application is **CONDITIONALLY APPROVED.**

ACU CONDITIONS:

Prior to issuance of the Master Use Permit

1. Signs shall be placed in a highly visible external location near both the main entry and the rear door, which state:

“Please be courteous to our surrounding neighbors by keeping noise levels down while smoking or leaving the premises.” Please contact _____ at _____ if you need assistance.

This signage shall include contact information for an on duty manager or business owner.

An affidavit from the owner shall be provided to the Land Use Planner attesting that this condition has been met.

2. Signage shall be posted on the exterior of the building, in the area of the sidewalk café, informing patrons that there shall be ***no food or beverage service in*** the sidewalk café after 10 p.m. Sunday through Thursday or after 11 p.m. Friday and Saturday.

An affidavit from the owner shall be provided to the Land Use Planner attesting that this condition has been met.

For the life of the permit

3. No live or amplified music shall be performed in the sidewalk café.
4. Notice will be provided a minimum of seven days in advance of live performances, in a location visible to nearby residents.
5. Adequate Security shall be provided by the business owner, for live performances, to assure that patrons conduct is not disruptive to the nearby residential uses, especially at closing time.
6. Required signage shall be maintained in a highly visible external location outside at the front and rear doors (per Condition 1) and on the building facade, in the area of the Sidewalk Café (per Condition 2).
7. It is the current business owner's responsibility to inform any subsequent owner of the drinking establishment of these conditions of operation.

Signature: _____ (signature on file) Date: June 11, 2009
Justina Guyott, Land Use Planner
Department of Planning and Development

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